

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KENNETH ALTIZIO,

Docket No.: 07 CV 6663 (CLB)(GAY)

Plaintiff,

VERIFIED ANSWER

-against-

MARRIOTT INTERNATIONAL, INC.,

Defendant.
-----X

Defendant, MARRIOTT INTERNATIONAL, INC., by its attorneys, GARBARINI & SCHER, P.C., as and for its Answer to plaintiff's Complaint, upon information and belief, states as follows:

FIRST: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraph designated "1" of the complaint.

SECOND: Denies each and every allegation contained in paragraphs designated "2", "3", "4", "5", "6", "8", "9", "10", "11", "12" and "13" of the complaint.

THIRD: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraph designated "7" of the complaint and begs leave to refer all questions of law and fact to the trial of the action.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

FOURTH: If injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the complaint, such injuries and damages are attributable in whole or in part, to the culpable conduct of the plaintiff.

FIFTH: If any damages are recoverable against said defendant, the amount of such damages shall be diminished in the proportion with the culpable conduct attributable to the plaintiff bears to the culpable conduct, if any, of said defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SIXTH: Pursuant to the F.R.C.P., the defendant objects to the jurisdiction of this action designated in the United States District Court for the South District of New York, on the ground that the United States District Court for the Southern District of New York is not the proper venue. Defendant, pursuant to the F.R.C.P, further demands that the place of trial herein be changed to the United States District Court of New Hampshire.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

SEVENTH: __ Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source according to the Federal Rules of Civil Procedure.

EIGHTH: If any damages are recoverable against this said answering defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

NINTH: Upon information and belief, this Court did not acquire jurisdiction over the defendant, MARRIOTT INTERNATIONAL, INC., herein in that said defendant was not legally served with process and consequently the Court lacks jurisdiction over the person and property of this answering defendant. (FRCP).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

TENTH: That the complaint fails to state facts sufficient to constitute a legal cause of action against this answering defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

ELEVENTH: If this answering defendant is found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable and therefore this answering defendant's liability shall be limited to its equitable share, pursuant to Federal Rules of Civil Procedure.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

TWELFTH: The answering defendant is entitled to a set-off pursuant to the F.R.C.P. insofar as settlement or release of one tortfeasor decreases the amount plaintiff may recover from the remaining tortfeasor(s) by the greater of: 1) the amount stipulated as consideration for the release; 2) the amount actually paid for the release; or, 3) the settling tortfeasor's equitable share of plaintiff's damages.

WHEREFORE, defendant, MARRIOTT INTERNATIONAL, INC., demands judgment dismissing the complaint, together with the costs and disbursements of this action.

Dated: New York, NY
July 25, 2007

GARBARINI & SCHER, P.C.

By: _____

WILLIAM G. SCHER (WS 2891)
Attorneys for Defendant
Office & P.O. Address
432 Park Avenue South
New York, NY 10016-8013
(212) 689-1113

TO:

EDWARD L. FORD, ESQ.
Attorney for Plaintiff
175 Main Street, Suite 416
White Plains, NY 10601
(914) 997-5162

STATE OF NEW YORK)
)SS.
COUNTY OF NEW YORK)

ATTORNEY VERIFICATION

WILLIAM G. SCHER, being duly sworn, deposes and says that he is a member of the law firm of **GARBARINI & SCHER, P.C.**, attorneys for defendant, **MARRIOTT INTERNATIONAL, INC.**, in the within action; that he has read the foregoing **ANSWER** and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes to be true.

Deponent further states that the reason why this verification is made by your deponent and not by said party is that the said party is not within the county where your deponent has his offices.

That the source of deponent's information and the grounds for his belief are reports of investigations and records in the file.

Dated: New York, NY
July 25, 2007

WILLIAM G. SCHER (WS 2891)

AFFIDAVIT OF SERVICE

[illegible]

Carol A. Stanton, being duly sworn, deposes and says, that the deponent is not a party of the action and is over 18 years of age.

That on the day of July, 2007, deponent served the within

VERIFIED ANSWER

upon the attorneys named below by depositing a true copy of the same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, and directed to the said attorneys at the address indicated below, such address being the address designated by said attorneys for that purpose.

EDWARD L. FORD, ESQ.
Attorney for Plaintiff
175 Main Street, Suite 416
White Plains, NY 10601

Carol A. Stanton

Sworn to before me this
day of July, 2007

Lynne Williams
Notary Public, State of New York
City of New York No. 01WI4507978
Certificate filed in Richmond County
Commissions Expires June 30, 2011

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GARBARINI & SCHER, P.C.
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